87

Supreme Court, U.S.
FILED

(1) 071135 DEC 26 2007

OFFICE OF THE CLERK

No. _____

IN THE SUPREME COURT
OF THE UNITED STATES

DELADIER D. MENDES,
Petitioner,

v.

MASSACHUSETTS,
Respondent.

On Petition for a Writ of Certiorari to the
Massachusetts Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

For the Petitioner,
DELADIER D. MENDES,
By his attorney,

_____
Jejomar G. Untalan
Untalan Law Firm
1900 Campus Commons Dr.,
Ste. 100
Reston, VA 20191-1516
Tel: 877.JGU.FIRM (548.3476)
Fax: 877.JGU.FAX3 (548.3293)
jomar@untalanlaw.us

Dated:

QUESTION PRESENTED

Whether the Fourth Amendment authorizes a warrantless search of a vehicle's locked trunk and the spare tire console based on the odor of burnt marijuana, the driver's nervousness and the presence of a large amount of money—despite the lack of contraband on the occupants or the passenger compartment?

TABLE OF CONTENTS

Cited Authorities iii

Opinions & Orders Entered . . . 1

Jurisdiction 1

Constitutional Provisions 1

Statement of the Facts 1

Argument 4

Appendix 8

- Trial Court's Findings of Fact & Rulings of Law 9
- MA Court of Appeals Court's Memorandum & Order . . . 21
- MA Supreme Judicial Court's Notice of Denial of Further Appellate Review . . 26

CITED AUTHORITIES

Constitutional Provisions

U.S. Const. art. IV 1, 3, 4

Statutory Provisions

28 U.S.C. 1257(a) 1

Cases

California v. Acevedo,
500 U.S. 565, 580 (1991) . . . 6

Carroll v. United States,
267 U.S. 132 (1925) . . . 4

United States v. Johns,
469 U.S. 478 (1985) . . . 4, 5

United States v. Nielsen,
9 F.3d 1487 (10th Cir. 1993) . . 6

United States v. Ross,
456 U.S. 798 (1982) . . 3, 4, 6

United States v. Sharpe,
470 U.S. 675 (1985) . . . 4, 5

United States v. Staula,
80 F. 3d 596 (1st Cir. 1996) . . 6

Wyoming v. Houghton,
526 U.S. 295 (1999) . . . 3

OPINIONS & ORDERS ENTERED

The decision of the Brockton Superior Court of Plymouth County (MA) was not published but a copy may be found on Page 9.

Similarly, the decisions of the Massachusetts Court of Appeals and the Supreme Judicial Court were not published, but copies may be found on Pages 21 and 26, respectively.

JURISDICTION

The Massachusetts Court of Appeals affirmed the petitioner's conviction and upheld the warrantless search on July 26, 2007. The Supreme Judicial Court of Massachusetts denied discretionary review on September 26, 2007. This Court has jurisdiction under 28 U.S.C. 1257(a).

CONSTITUTIONAL PROVISIONS

The Fourth Amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . ."

STATEMENT OF THE FACTS

On September 26, 2004, a Massachusetts state trooper observed a vehicle cross over a dividing line on the road and performed a traffic stop. The petitioner was the driver and another male passenger occupied the front seat.

As the trooper approached the driver-side window, the petitioner reached with his left hand toward the center console and the trooper smelled burnt marijuana. Upon the trooper's request, the petitioner produced his license and registration, and the petitioner then made a tucking-type motion with his right hand near the center console.

The trooper noticed that the petitioner's hands were shaking. The trooper asked why his hands were shaking, and the petitioner admitted that he was nervous.

The trooper ordered the petitioner to exit the vehicle and placed him into the back of the cruiser, un-cuffed and with the door ajar. The trooper then ordered the passenger to exit the vehicle.

The trooper searched the front seats and the middle console area. A stronger odor of burnt marijuana emanated from the middle console. The trooper opened the compartment and found rolls of money (later counted to be over $11,000). The passenger denied knowledge of the money, and the petitioner identified the cash as proceeds from a settlement.

A back-up cruiser then arrived, and the trooper continued his search of the vehicle. The trooper unlocked the trunk and removed the mat covering the spare tire compartment, leading to the discovery of bags of cocaine.

No marijuana was ever discovered.

The petitioner and the passenger were arrested and advised of their *Miranda* rights. At the police barracks, the petitioner voluntarily approached the trooper and stated that the petitioner had nothing to do with the drugs in the vehicle.

On December 17, 2004, a grand jury indicted the defendant for trafficking in cocaine.

The petitioner filed a motion to suppress the money and cocaine, arguing that the warrantless search of his vehicle violated the Fourth Amendment (p. 9). The trial court denied the petitioner's suppression motion and ruled that the circumstances established probable cause under the Fourth Amendment to search the vehicle, citing Wyoming v. Houghton, 526 U.S. 295 (1999) (p. 17).

A bench trial ensued on October 20, 2005, and the petitioner was convicted for trafficking in cocaine.

The Massachusetts Appeals Court affirmed the defendant's conviction on July 26, 2007. The Appeals Court opined that the Fourth Amendment justified the warrantless search, relying upon United States v. Ross, 456 U.S. 798 (1982) (pp. 23-24).

The Supreme Judicial Court denied further appellate review (p. 26), and the petitioner now seeks a writ of certiorari.

ARGUMENT

A writ of certiorari should issue because this Court has not yet directly addressed, under the Fourth Amendment, the scope and extent of a warrantless search of a vehicle when triggered by the odor of burnt marijuana. Here, the odor of burnt marijuana resulted in the search of a locked trunk, despite the lack of actual contraband on the occupants or in the passenger compartment.

The Court has held that an automobile may be seized and searched without a warrant upon probable cause that the vehicle carried contraband. See Carroll v. United States, 267 U.S. 132, 159-62 (1925) (liquor hidden in backseat cushions). The Court subsequently decided that the odor of marijuana furnishes probable cause to believe that the vehicle may contain contraband, thus authorizing a warrantless automobile search. See United States v. Johns, 469 U.S. 478, 487 (1985) (search of packages wrapped in dark green plastic in back of pickup truck), United States v. Sharpe, 470 U.S. 675, 687 (1985) (search of trailer towed by vehicle).

The Court has further opined, "if probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." United States v. Ross, 456

U.S. 798, 825 (1982) (confirmed tip of narcotics sales, bullet on front seat and pistol in glove compartment justified search of locked trunk).

In light of the broad language in Ross, it must be clarified that the scope and extent of the automobile search must still be limited in scope and proportional to the circumstances of the case. It seems constitutionally disproportional to justify a search of a locked trunk based on the odor of smoked marijuana when no actual contraband had yet been discovered on the occupants or in the passenger compartment.

Notably, Ross involved a reliable tip that the car transported drugs in the trunk, the immediate discovery of contraband (bullet and gun) and the arrest of the suspect before the search of the locked trunk. This case, on the other hand, lacks a confidential informant and the immediate discovery of contraband. In addition, the search of the trunk preceded the arrest. Consequently, Ross' broad language may not be as applicable to this case.

The Court's decisions after Ross suggest that the probable cause established by the odor of marijuana emanating from a vehicle justifies a search that is confined to the suspect area, as opposed to a full-blown search of the vehicle. See United States v. Johns, 469 U.S. 478, 487 (1985) (search of packages wrapped in dark green plastic in back of pickup truck), United States v. Sharpe, 470 U.S. 675, 687 (1985) (odor from attached camper justified search of that trailer).

In addition, the Court also appears to have moved towards establishing a limit to the scope and extent of a warrantless automobile search: "The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained." California v. Acevedo, 500 U.S. 565, 580 (1991) (probable cause to believe that bag in trunk contained marijuana). The Court specifically noted that probable cause to search a specific container or location in a vehicle does not then justify a warrantless search of the entire automobile. See Acevedo at 579 citing United States v. Ross, 456 U.S. 798 (1982).

This language in Acevedo touches upon the major issue in this case: whether the odor of burnt marijuana emanating from the middle console of the passenger compartment then establishes probable cause to search the locked trunk.

The Tenth Circuit has expressly ruled that the odor of burnt marijuana from the passenger compartment fails to establish probable cause to search the vehicle's trunk. See United States v. Nielsen, 9 F.3d 1487, 1491 (10th Cir. 1993).

The First Circuit has suggested that the odor of marijuana from the passenger compartment justifies a search of only that area. See United States v. Staula, 80 F. 3d 596, 602 (1st Cir. 1996) (odor from passenger compartment justifies search of passenger's seat).

In light of this ambiguity, the trooper here, at best, possessed probable cause to search the middle console and passenger compartment, but not the locked trunk.

WHEREFORE, the petitioner respectfully requests that a writ of certiorari be issued.

Respectfully submitted for
DELADIER D. MENDES,
By his attorney,

Jejomar G. Untalan
Untalan Law Firm
1900 Campus Commons Dr.,
Ste. 100
Reston, VA 20191-1516
Tel: 877.JGU.FIRM (548.3476)
Fax: 877.JGU.FAX3 (548.3293)
jomar@untalanlaw.us

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

COMMONWEALTH OF MASSACHUSETTS
PLYMOUTH, ss. SUPERIOR COURT
CRIMINAL ACTION
NO. 04-00488

COMMONWEALTH OF MASSACHUSETTS
vs.
DELADIER DERRILL MENDES

FINDINGS OF FACT, RULINGS OF LAW AND ORDER ON DEFENDANT'S MOTION TO SUPPRESS PHYSICAL EVIDENCE AND STATEMENTS

Pursuant to Mass. R. Crim. P. 13, the Fifth and Fourteenth Amendment of the United States Constitution and Article 12 of the Massachusetts Declaration Of Rights, defendant Deladier Derrill Mendes ("Mendes") has moved to suppress the fruits of a search of a motor vehicle that was detained by Massachusetts State Troopers on September 26, 2004. On the ground that any statements obtained from Mendes were the result of the alleged illegal search and seizure of the motor vehicle, Mendes also seeks suppression of such statements.

Mendes claims that the detention of the car was not based on a valid observance of traffic violations; that Mendes was inappropriately asked to step out of the detained car; that the Troopers' retrieval of US currency from the car's console was not valid; that the search of the vehicle's trunk and spare tire compartment was not justified; and that statements obtained by the law enforcement

agents were either fruits of an illegal search and seizure or obtained in violation of *Miranda*.

In opposition to the suppression motion, the Commonwealth contends that the search of the properly detained motor vehicle was conducted based on probable cause to believe that contraband was in the detained vehicle. The Commonwealth further asserts that Mendes' statements were the product of appropriate threshold inquiry of a non-custodial nature, or by Mendes' unsolicited decision to speak.

An evidentiary hearing on the motion to suppress evidence was conducted on May 9, 2005. Testifying under oath at the hearings was Massachusetts State Trooper Mark Cohen ("Cohen").

Submitted to the court at hearing were a series of photographs (Exhibit Nos. 1 - 5); a copy of a traffic citation (Exhibit No. 6).

For the reasons discussed below, the defendant's motion to suppress physical evidence and statements is **DENIED**.

FINDINGS OF FACT

At approximately 7:45 PM on Sunday, September 26, 2004, then nine-year veteran Trooper Cohen was in the middle of his 3:00 PM to 11:00 PM shift. Cohen was alone in his cruiser on Westgate Drive in Brockton when he first noticed a red Honda whose rear license plate was dangling

on one side. Cohen saw the car when his cruiser was in the vicinity of the Westgate Mall area's bowling lanes. He followed the Honda as it headed off Westgate Drive through an intersection and turned onto Rte. 27 southbound. Cohen then saw the car's left tires cross the "skip lines" that run down the center of the auto traffic lanes on Rte. 27. Cohen activated his car's emergency lights and had the Honda pull to the curb. Cohen's siren was not activated. The sun was beginning to set as the traffic stop occurred.

Cohen could see that the Honda contained two people. The individual operating the car was later identified as the defendant. Cohen began to approach the driver's side window on foot, and from a distance of approximately ten feet he saw the defendant use his left hand to reach toward the center console area of the Honda. When Cohen arrived at the driver's window, he was able to smell a strong odor of burnt marijuana. Cohen's academy training, his nine years as a State Trooper (coupled with his approximate two years as a Middleton police officer before becoming a State Trooper), have provided Cohen with training and professional exposure to marijuana. Further, Cohen has participated in several drug arrests during his law enforcement career.

Cohen asked the defendant for his license and registration. The defendant handed the items to Cohen, but after they were produced, Cohen saw Mendes use his right hand to engage in a tucking-type motion toward the car's center console area. Cohen became concerned for his

safety and requested Mendes to step out of the car and to move to its rear. As Cohen pat frisked the defendant, he noticed that Mendes' hands were shaking. When Cohen asked Mendes why he was reaching toward the console area, Mendes responded that he was nervous and that the movement was a subconscious reaction.

Cohen advised Mendes that he was going to search the Honda. Cohen walked Mendes over to his cruiser and had him sit inside. The cruiser's door was kept ajar. Mendes was not handcuffed. There is no evidence that Cohen's service weapon was displayed. Cohen did not tell Mendes that he was either free or not free to leave. Cohen advised Mendes that he was going to search the Honda, and Mendes responded that he did not want Cohen to search the car.

Cohen then went back to the Honda and asked the passenger to step out of the car. The passenger, later identified as a man named "Pinero" provided Cohen with a driver's license or, perhaps, an identification card. Cohen then had Pinero stand approximately fifteen feet away from the Honda.

Cohen looked into the car's console area and between its front seats, and as he did so he detected a strong odor of marijuana emanating from the console area. He opened the console and discovered four large "rolls" of US currency inside. The money totaled approximately $11,118.00. The bundles of cash consisted of one-dollar, ten-dollar, twenty-dollar, fifty-dollar and one hundred-dollar

denominations. No contraband was otherwise located in the console or in the car's glove box.

Passenger Pinero denied any knowledge of the money. Cohen went back to his cruiser and asked Mendes if he knew anything about the US currency. Mendes said that he had been playing pool that night, and that the money was the result of a settlement (or words to that effect). Suppression hearing testimony reflects that Cohen neither asked Mendes for any further elaboration or explanation of this response nor did Mendes offer any.[1]

A fellow State Trooper ("Bond") then arrived at the detention location. Cohen then went back to the Honda. He opened the car's trunk and began to search the trunk area. He pulled up the spare tire covering and then the cardboard spare tire cover. Underneath, he saw two plastic bags, each of which appeared to contain ten individual plastic bags of suspected cocaine.

Cohen advised Bond of his discovery. Cohen placed Pinero under arrest and placed him into Bond's cruiser. Next, the defendant was taken out of Cohen's cruiser and formally placed under

---

[1] The balance of the suppression hearing testimony does not provide any additional context to Mendes' use of the word "settlement." That is to say, the court does not have a factual basis upon which it can determine whether the multiple thousands of dollars found in the Honda represent billiard winnings, proceeds from a successful insurance claim, or some other benign source.

arrest. Reading from a card in his possession, Cohen advised Mendes of his rights per *Miranda*. There is no evidence that Cohen thereafter asked Mendes any questions while at the Rte. 27 scene. From the initial vehicle detention until Mendes' arrest, the encounter lasted approximately ten-to-fifteen minutes.

Cohen called for a tow truck for the Honda and he also requested a K-9 unit to assist. The car was towed to the Middleboro barracks. Cohen escorted Mendes into the police station. During the booking process, Mendes told Cohen that he wanted to talk to him. Mendes then told Cohen that Pinero had nothing to do with the drugs found inside the car. Other than the usual acquisition of booking information, Cohen asked Mendes no questions.

The K-9 unit that was brought to the Honda "alerted" to the console area, but no additional contraband was found. Cohen issued a traffic citation charging a "marked lanes" violation and "display of plate" infraction. (See Exhibit No. 6)

RULINGS OF LAW

The Motor Vehicle Stop and Search

Based on credible testimony adduced at the suppression hearing, Trooper Cohen's observations of the Honda's misaligned license plate and broaching of the skip lines while traveling on Rte. 27 justified the motor vehicle detention in this instance. *Commonwealth v.*

Santana, 420 Mass. 205, 207 (1995); *Commonwealth v. Bartlett*, 41 Mass. App. Ct. 468, 471 (1996); *Commonwealth v. Johnson*, 413 Mass. 598 (1992); *Commonwealth v. Rivera*, 33 Mass. App. Ct. 311, 314 (1992); *Commonwealth v. Santiago*, 30 Mass. App. Ct. 207, 210 (1991); *Commonwealth v. Bacon*, 381 Mass. 642, 644 (1980).

The court also takes note that the nature of any stop defines the scope of the initial inquiry by the officer. *Commonwealth v. Bartlett*, supra, at 470; *Commonwealth v. McCleery*, 345 Mass. 151, 153 (1962). Of course, an officer need not ignore what he sees, smells, or hears prior to or during a stop, and his observations may provide the basis for further inquiry (i.e., probable cause to investigate further). See *Commonwealth v. Bartlett*, supra, at 471; *Commonwealth v. Blais*, 428 Mass. 294 (1998). In this case, Cohen's perception of the strong burnt marijuana odor emanating from the Honda's interior through the car's open driver's window provided probable cause to believe that there was contraband within the vehicle and that a warrantless search thereof was justified. *Commonwealth v. Kitchings*, 40 Mass. App. Ct.. 591, 596 (1996); *Commonwealth v. Skea*, 18 Mass. App. Ct. 685, 690 n. 8 (1984).

Moreover, because Cohen was alone, because dusk was approaching, and because Cohen first saw the driver's left hand and, subsequently, his right hand moving in the area of the car's console, it was reasonable for him to be concerned about his safety and to request the

driver and passenger to alight from the car. *Commonwealth v. Vasquez*, 426 Mass. 99, 102-103 (1997) (driver and occupants may be ordered from vehicle if a reasonably prudent person in the officer's position would be warranted in the belief that the safety of the officer or others was in danger); *Commonwealth v. Williams*, 46 Mass. App. Ct. 181, 183 (1999).

The scope of a motor vehicle stop can extend beyond obtaining a license and registration from the suspect, to ordering him out of a vehicle (an "exit order"), *if* the degree of the intrusion is proportional to the degree of suspicion prompting that intrusion. See *Commonwealth v. Watson*, 430 Mass. 725, 731-733 (2000) and the cases cited therein. Proportionality is a dynamic principle, as suspicion may escalate over the course of a stop. *Commonwealth v. Sinforoso*, 434 Mass. 320, 324-25 (2001) (observations during a routine traffic stop led to pat-frisk, further observations suggesting illegal drug activity, and probable cause for searching vehicle); *Commonwealth v. Bartlett*, supra, at 471.

In this case, Cohen's exit order was reasonably designed to allow him to conduct safely the vehicle search. *Commonwealth v. Torres*, 433 Mass. 669, 673-674 (2001) (exit order permissible because facts supported not only the officer's reasonable belief that his safety was at risk, but also that criminal behavior beyond a mere traffic violation was afoot and was the proper subject of further police investigation); *Commonwealth v. Gonsalves*, 429 Mass. 658, 664-665 (1999).

Mendes' placement in the back seat of Cohen's cruiser was likewise reasonable under the circumstances, and did not constitute custody for purposes of *Miranda*. *Kitchings*, supra, at 596-597; *Commonwealth v. Ayre*, 31 Mass. App. Ct. 17,20 *review denied* 411 Mass. 1101 (1991).

Once Mendes and Pinero were separated safely from each other and from the Honda, Cohen's detection of a stronger odor of marijuana in the console area — stronger than the burnt marijuana odor he first noticed as he approached the Honda — supplied increased cause to believe that contraband might be secreted in or around that location. Thereafter, his discovery of the console's large cash content — four separate rolls of assorted currency denominations — heightened the nine-year veteran's suspicion that marijuana may have been distributed and the cash proceeds temporarily placed where the contraband may have been. *Cf. Commonwealth v. Sendele*, 18 Mass. App. Ct. 755, 758-759 (1984). Mendes' vague response to Cohen's inquiry about the money provided no prudent basis to dispel Cohen's growing suspicions, but, rather, served to verify Cohen's suspicions of criminal activity. It follows that the ongoing circumstances enhanced Cohen's suspicions that the vehicle might contain additional contraband and/or monies associated with significant drug activity. Under all of the circumstances, there was probable cause for Cohen to inspect the car's trunk area. *Wyoming v. Houghton*, 526 U.S. 295, *Commonwealth v. Kitchings*, supra, at 596; *Commonwealth v. Cast*, 407 Mass. 891, 906-907 (1990).

Mendes' Statements

Based on the testimony adduced at suppression hearing, several statements warrant consideration for suppression: 1) Mendes' verbal response when Cohen asked why he had reached for the car's console; 2) his statement regarding the source of the discovered $11,000; and 3) Mendes' statement to Cohen during the booking process. The defendant's filed motion to suppress (and his supporting affidavit dated February 5,2005) only claims that his statements were the fruits of improper police action. At the motion to suppress hearing the defendant further asserted violation of his *Miranda* rights although no supplemental affidavit was submitted.

Clearly, the first statement that Mendes tendered at or around the time that he was being patted down outside of the Honda does not equate to a custodial interrogation. The first question was aimed at allaying Cohen's safety concerns after he saw the defendant reaching toward the car's console area two times.

Mendes' second statement, given while he was seated in Cohen's cruiser, was not the product of a custodial interrogation that mandates application of *Miranda*. Rather, both of these initial inquiries were reasonably aimed at verifying or dispelling quickly Cohen's safety concerns and/or intended to resolve Cohen's escalating concerns regarding possible criminal activity. *Commonwealth v. Kitchings*, supra at 596-597; *Commonwealth v. Ayre*, supra, at 20; See

also *Commonwealth v. Morse*, 427 Mass. 117, 122-123 (1998) (citing *Commonwealth v. Jung*, 420 Mass. 675, 688 (1995)). The length and nature of the field inquiries was brief and simple. *Commonwealth v. Laarnan*, 25 Mass. App. Ct. 354 (1988). There is no evidence that any questions that Cohen posed was asked in anything but a calm manner. There is no evidence that verbal or physical pressure was applied to Mendes in order to force any admissions of wrongdoing. The statements obtained on Rte. 27 shall not be suppressed for violation of Miranda nor as products of an improper traffic stop and motor vehicle search.

Finally, the defendant seeks suppression of the statements made during the booking procedure. There is credible evidence that Cohen informed Mendes of his rights per Miranda at the time of the arrest. But, even if the warning was somehow insufficient, there is no evidence that Cohen thereafter solicited any post-arrest statements from Mendes. Although Mendes was in custody at the time of his police station declaration regarding his passenger's lack of connection to the contraband, there is no evidence that Mendes' statement was prompted by any questions from Cohen or from any other law enforcement official. Mendes' booking process statement regarding Pinero and the contraband shall not be suppressed.

ORDER

For the foregoing reasons, it is hereby **ORDERED** that the defendant's motion to suppress physical evidence seized from the Honda on September 26, 2004, be **DENIED.** Further, the defendant's motion to suppress statements on the grounds that they were obtained pursuant to an illegal search, or were obtained in violation of *Miranda*, is also **DENIED**.

/s/ Joseph M. Walker III
Justice of the Superior Court

DATED: June 3, 2005

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

06-P-1491

COMMONWEALTH

vs.

DELADIER D. MENDES

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Facts. On September 26, 2004, Massachusetts State Trooper Mark Cohen observed a red Honda with its license plate dangling off to one side. He followed the Honda, saw the car's left tires cross over a dividing line on the road, and pulled the car over.

Inside the car, Cohen saw two people. As Cohen approached the driver's side window, he observed the defendant, who was in the driver's seat, reach with his left hand toward the center console. As Cohen got closer to the vehicle, he smelled burnt marijuana.

Cohen asked the defendant for his license and registration. When the defendant produced them, he used his right hand in a tucking-type motion near the center console. Cohen became concerned for his safety and asked the defendant to step out of the car. Cohen noticed that the

defendant's hands were shaking. When asked why he was reaching toward the console, the defendant said that he was nervous.

Cohen announced that he was going to search the car, and brought the defendant to the police cruiser. The defendant was placed in the cruiser without handcuffs and with the door ajar. He told Cohen that he did not want him to search the car. Cohen returned to the Honda and had the passenger step out of the car. Cohen searched the car's console area and between the front seats. During this search, he detected an even stronger odor of marijuana emanating from the console area. He opened the console and found rolls of money totaling over $11,000. The passenger denied any knowledge of the money, and the defendant said that the money was a result of a settlement.

When a second State trooper arrived at the scene, Cohen returned to the Honda, opened the trunk, and searched it. He pulled the covering off the spare tire and found two plastic bags, each containing ten individual plastic bags of cocaine.

In December, 2004, the defendant was indicted for trafficking in a controlled substance in violation of G. L. c. 94C, § 32E(b). Thereafter, an evidentiary hearing was held on the defendant's motion to suppress, and the motion was denied.[2]

---

[2] In addition to the physical evidence, the defendant also sought to suppress his statements, the denial of which he does not challenge on appeal.

Following a jury-waived trial, the defendant was found guilty.

Discussion. The motion to suppress. "In reviewing a ruling on a motion to suppress we accept the judge's subsidiary findings of fact absent clear error 'but conduct an independent review of his ultimate findings and conclusions of law.'" Commonwealth v. Scott, 440 Mass. 642, 646 (2004), quoting from Commonwealth v. Jimenez, 438 Mass. 213, 218 (2002). Here, the propriety of the traffic stop, itself, is not in dispute. Rather, the defendant challenges whether the search was justified by probable cause. "[T]o have had probable cause to arrest and search the defendant, the police officers would have to have known of enough facts and circumstances 'to warrant a person of reasonable caution in believing that the defendant had committed or was committing a crime.'" Commonwealth v Va Meng Joe 425 Mass. 99, 102 (1997), quoting from Commonwealth v. Gullick, 386 Mass. 278, 283 (1982). "Probable cause requires more than mere suspicion but something less than evidence sufficient to warrant a conviction." Commonwealth v. Kotlyarevskiy, 59 Mass. App. Ct. 240, 243 (2003), quoting from Commonwealth v. Hason, 387 Mass. 169, 174 (1982).

Here, when the trooper smelled the odor of burnt marijuana, saw the defendant's suspicious movements at the center console, and witnessed his nervousness, he had probable cause to search the vehicle. See Commonwealth v. Kitchings, 40 Mass. App. Ct. 591, 597 (1996); Commonwealth v.

Baez, 47 Mass. App. Ct. 115, 118-119 (1999). "[I]f probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." Commonwealth v. Wunder, 407 Mass. 909, 913 (1990), quoting from United States v. Ross, 456 U.S. 798, 825 (1982). When the trooper discovered the large amount of cash in the car's console, he reasonably could have viewed the smell of marijuana and the cash together as indicia of drug trade. See Pena v. Commonwealth, 426 Mass. 1015, 1017-1018 (1998); Commonwealth v. Suarez, 59 Mass. App. Ct. 111, 118-119 (2003).

Sufficiency of the evidence. When analyzing whether the record evidence is sufficient to support a conviction, the relevant question is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Commonwealth v. Latimore, 378 Mass. 671, 677 (1979), quoting from Jackson v. Virginia, 443 U.S. 307, 319 (1979). To support a finding of guilt, inferences drawn by the fact finder "need only be reasonable and possible and need not be necessary or inescapable." Commonwealth v. Laro, 68 Mass. App. Ct. 556, 559 (2007), quoting from Commonwealth v. Casale, 381 Mass. 167, 173 (1980).

Considering the evidence in the light most favorable to the Commonwealth, a rational trier of fact could reasonably have found all the required

elements beyond a reasonable doubt. See Commonwealth v. Latimore, supra at 677-678. The evidence that the defendant was driving the car which contained the drugs and money, the packaging of the cocaine found in the trunk, his statement that exculpated the passenger and thereby inculpated himself, his acknowledgment that the large amount of money was his, and other facts presented at trial, permitted the inference that the defendant possessed and was trafficking cocaine.

Judgment affirmed.

By the Court (Grasso, Brown & Meade, JJ.),

/s/ (illegible)
First Asst. Clerk

Entered: July 26, 2007.

Supreme Judicial Court for the
Commonwealth of Massachusetts
John Adams Courthouse
One Pemberton Square, Suite 1400
Boston, Massachusetts 02108-1724
Telephone 617-557-1020, Fax 617-557-1145

Jejomar G. Untalan, Esquire
1984 Isaac Newton Square. W
Suite 202
Reston, Virginia 20190-5001

RE: Docket No. FAR-16428

COMMONWEALTH
vs.
DELADIER D. MENDES

Plymouth Superior (Brockton) No. PLCR2004-00488
A.C. No. 2006-P-1491

NOTICE OF DENIAL OF F.A.R. APPLICATION

Please take note that on 09/26/07, the above-captioned Application for Further Appellate Review was denied.

Susan Mellen,
Clerk

Dated: September 26, 2007

To: Audrey Anderson Kachour, A.D.A.
Jejomar G. Untalan, Esquire